

FILED

OCT 25 2006

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA
SACRAMENTO DIVISION

In re)	Case No. 05-20041-A-11
RUSS TRANSMISSION, INC.,)	Docket Control No. PP-8
)	Sept. 26 & 27 and Oct. 5,
Debtor.)	2006

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On September 26, 2006, September 27, 2006, and October 5, 2006, the court held evidentiary hearings on the objection of Kevin Nelson to proof of claim of Kirk Nelson. That proof of claim (claim no. 12) was filed on March 31, 2006, then amended on September 11, 2006 (claim no. 14).

Daniel L. Egan and Megan A. Lewis of Wilke, Fleury, Hoffelt, Gould & Birney, LLP, appeared for creditor Kirk Nelson; Thomas Phinney of Parkinson & Phinney appeared for the objecting party, Kevin Nelson; and Thomas Willoughby of Felderstein, Fitzgerald, Pascuzzi & Willoughby appeared for the chapter 11 trustee, Hank Spacone.

Based on the evidence presented, and pursuant to Federal Rules of Bankruptcy Procedure 7052 and 9014, the court finds and concludes as announced orally and on the record as well as is set forth below:

1. On January 3, 2005, the debtor, Russ Transmission, Inc., filed a voluntary chapter 11 petition. A trustee was

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1 thereafter appointed pursuant to 11 U.S.C. § 1104(a)(2) on or
2 about February 18, 2005.

3 2. On June 6, 2006, creditor and shareholder Kevin Nelson
4 filed his objection to the proof of claim filed by Kirk Nelson.
5 Kirk Nelson is also a shareholder of the debtor.

6 3. The objection is a contested matter over which this
7 court has subject matter jurisdiction. See 28 U.S.C. § 1334(b).
8 It is a core proceeding. See 28 U.S.C. § 157(b)(2)(B), & (O).

9 4. The objection to claim and notice of the hearing on the
10 objection, as well as notice of the deadline for a response to
11 the objection, were duly served on all required and necessary
12 parties, including Kirk Nelson and his attorney.

13 5. The claim for \$8,000, denoted as a "Loan to Shop" on
14 April 13, 2001, is not supported by documentary or other
15 evidence. Because Kirk Nelson has failed to establish that this
16 loan was made to and received by the debtor, this claim will be
17 disallowed.

18 6. The claim for \$12,500, denoted as "Loan to Shop" on
19 June 7, 2001, is supported by evidence. It was an advance from
20 Kirk Nelson to the debtor under circumstances indicating that the
21 debtor was to repay the loan upon demand.

22 7. The claim for \$90,000 denoted as "Cashier's Check to
23 River City Bank for payoff of Hedge Property" on September 8,
24 2004, is supported by evidence and constituted an advance to
25 Kevin Nelson for the benefit of the debtor. At the time of the
26 transfer of the cashier's check, the debtor was the beneficial
27 owner of the Hedge Property and the payment of \$90,000 was made
28 to save that property from foreclosure. Thus, even though paid

1 to Kevin Nelson, the payment was for the benefit of the debtor.
2 Further, the advance creates an enforceable right to repayment in
3 the amount of \$90,000.

4 8. The claim for \$15,000 denoted as "Check No. 1699 to
5 Kevin Nelson for payoff of Hedge Property" on October 19, 2004 is
6 supported by evidence and constituted an advance for the benefit
7 of the debtor. At the time of the transfer of the check, the
8 debtor was the beneficial owner of the Hedge Property and the
9 payment of \$15,000 was made to save that property from
10 foreclosure. Thus, even though paid to Kevin Nelson, the payment
11 was for the benefit of the debtor. Further, the advance creates
12 an enforceable right to repayment in the amount of \$15,000.

13 9. The claim for \$15,000 denoted as "Check No. 1345 to
14 Kevin Nelson" is supported by evidence and constituted an advance
15 for the benefit of the debtor. The advance creates an
16 enforceable right to repayment in the amount of \$15,000.

17 10. The claim for \$718.61 denoted as "Payment on Bank of
18 America Line of Credit" is supported by evidence and constituted
19 an advance for the benefit of the debtor. The advance creates an
20 enforceable right to repayment in the amount of \$718.61.

21 11. The claim for \$10,000 denoted as "Payment to Hefner,
22 Stark & Marois" is supported by evidence and constituted an
23 advance for the benefit of the debtor. The advance creates an
24 enforceable right to repayment in the amount of \$10,000.

25 12. Kevin Nelson contends that Kirk Nelson was paid a
26 salary that was not commensurate with his services to the debtor.
27 The debtor and its principals, including Kevin Nelson, and later
28 the trustee, agreed to pay a salary to Kirk Nelson for his

1 services in operating and managing the debtor's transmission
2 business, only the agreed upon salary was actually paid to Kirk
3 Nelson, the bargained for services were actually performed by
4 Kirk Nelson, the bargained for services benefitted the debtor,
5 there is no persuasive evidence that the services of Kirk Nelson
6 were not fair consideration for the salary paid him by the
7 debtor, there is no persuasive evidence that the salary paid Kirk
8 Nelson was unfair or excessive, and the debtor is not entitled to
9 recover any portion of that salary as overpayments or offsets to
10 the debtor's liability to Kirk Nelson.

11 13. Prior to the commencement of the case the debtor
12 transferred property located on Hedge Avenue, Sacramento,
13 California to Kevin Nelson. The transfer was made for no past,
14 present, or future consideration from Kevin Nelson or anyone
15 else. While at and around the time of the transfer, the debtor
16 and Kevin Nelson intended that the debtor remain the beneficial
17 owner of the property, Kevin Nelson since has maintained that he
18 is both its record and beneficial owner. The debtor is not
19 seeking to recover the property from Kevin Nelson. Therefore,
20 because the transfer was for no consideration and was transferred
21 to Kevin Nelson because he was a shareholder of the debtor, the
22 value of the transfer, \$792,000, is a dividend. That is, it was
23 transferred to Kevin Nelson on account of his equity interest in
24 the debtor.

25 14. Kevin and Kirk Nelson each own one-half of the
26 outstanding shares of stock in the debtor.¹

27
28 ¹ The court makes no findings or conclusions regarding
any right that Ronald and Mary Ann Nelson, the parents of Kirk

CERTIFICATE OF MAILING

I, Susan C. Cox, in the performance of my duties as a judicial assistant to the Honorable Michael S. McManus, mailed by ordinary mail to each of the parties named below a true copy of the attached document.

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Dated: October 26, 2006

Susan C. Cox
Susan C. Cox
Judicial Assistant to Judge McManus